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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/529,743	03/29/2005	Jean-Thierry Simonnet	267329US0PCT	8358
22850 7590 07/30/2008 OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			EXAMINER KASSA, TIGABU	
			ART UNIT 4161	PAPER NUMBER
			NOTIFICATION DATE 07/30/2008	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/529,743	<b>Applicant(s)</b> SIMONNET, JEAN-THIERRY	
	<b>Examiner</b> TIGABU KASSA	<b>Art Unit</b> 4161	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 June 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 41-86 is/are pending in the application.
- 4a) Of the above claim(s) 41-60, 81-83 and 86 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 60-80, and 84-85 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>01/26/2007 and 03/29/2005</u> .                               | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of with traverse of Group II in the reply filed on June 20, 2008 is acknowledged. In addition, the applicant's election of the species of polystyrene-polyethylene oxide, styrene, polyethylene oxide, 4-(tert-butyl)-4'-methoxydibenzoylmethane, a fatty substance, and eucalyptus oil is also acknowledged. The traversal is on the ground(s) that no adequate reasons and/or examples have been provided to support a conclusion of patentable distinctiveness and that no evidence of a search burden has been presented. This is not found persuasive because applicant is arguing an inappropriate restriction standard.

The Examiner has properly applied the standard of unity of invention that governs this application. This application is a national stage filing of a PCT application under 35 USC 371. 35 USC 372 (a)(2) provides authority to evaluate unity of invention:

[T]he Director may cause the question of unity of invention to be reexamined under section 121 of this title, within the scope of the requirements of the treaty and the Regulations;

As such, all claims of the application must be examined together as long as there is unity of invention as defined in Patent Cooperation Treaty Rule 13.2 and 37 CFR 1.475(a):

An international and a national stage application shall relate to one invention only or to a group of inventions so linked as to form a single general inventive concept ("requirement of unity of invention"). Where a group of inventions is claimed in an application, the requirement of unity of invention shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression "special technical features" shall mean those technical features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.

Examiner has determined that the instant application lacks unity of invention because claim 61 does not define a contribution over the prior art. Since claim 61 does not define a contribution over the prior art, it does not possess a special technical feature; since it does not possess a special technical feature, it cannot share a special technical feature with the other inventions; therefore, the instant application lacks unity of invention. Under these circumstances, restriction is proper as outlined in 37 CFR 1.499:

If the examiner finds that a national stage application lacks unity of invention under § 1.475, the examiner may in an Office action require the applicant in the response to that action to elect the invention to which the claims shall be restricted. Such requirement may be made before any action on the merits but may be made at any time before the final action at the discretion of the examiner. Review of any such requirement is provided under §§ 1.143 and 1.144.

As such the restriction requirement is deemed proper and made FINAL.

In response to applicant's election, Group I (claims 41-60, 81-83, and 86), have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicants have elected Group II with traverse.

Upon further consideration by the examiner, the species election set forth in the Office Action mailed 06/20/08 is hereby removed. Therefore Applicant's election of species is moot and will not be addressed.

### ***Status of the Claims***

This application is a 371 of PCT/EP03/13050 filled on 10/16/2003, which is filled at national stage 03/29/2005.

Claims 1-40 are cancelled, claims 41-60, 81-83, and 86 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being

no allowable generic or linking claim, while claims 61-80 and 84-85 are currently pending and are the subject of this Office Action. This is the first Office Action on the merits of the claims.

***Priority***

The earliest effective filing date afforded for the instantly claimed invention, has been determined to be 10/16/2003, the filing date of the PCT/EP03/13050.

***Information Disclosure Statement***

The information disclosure statement (IDS) submitted on July 26, 2006 was noted and the submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the examiner has considered the information disclosure statement.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 61-62, 64-73, and 75-80 are rejected under 35 U.S.C. 102(e) as being anticipated by L'Alloret (US Patent No. 6,994,846, filed on July 18, 2002).

Instant claim 61 recites a cosmetic composition comprising at least one aqueous phase, at least one lipophilic compound and at least one block amphiphilic copolymer comprising at least

Art Unit: 4161

one of an ionic or a nonionic hydrophilic polymer block and at least one hydrophobic polymer block.

L'Alloret (US Patent No. 6,994,846) discloses that a cosmetic and/or dermatological composition comprising at least one aqueous phase including at least one water soluble or water dispersible polymer, of triblock structure B-A-B in which A is an ionic water soluble polymer block (hydrophilic) and B is a hydrophobic polymer block (column 3, lines 54-67), wherein the hydrophobic polymer block comprises polymerized monomer units of styrene (column 6, lines 20-67), and the composition also comprises lipophilic compounds such as active agents and sunscreen agents, which reads on instant claim 61.

Instant claim 62 recites in the composition the block amphiphilic copolymer is the sole solvent for the lipophilic compound.

L'Alloret (US Patent No. 6,994,846) teaches as discussed above the incorporation of the amphiphilic copolymer and lipophilic compounds. In further explanation L'Alloret (US Patent No. 6,994,846) defines that "water soluble or water-dispersible" means "polymers which, when introduced into an aqueous phase at 25 C, at a weight concentration equal to 1%, allow the production of a macroscopically homogeneous and transparent solution, i.e. a solution with a maximum light transmittance value, at a wavelength equal to 500 nm, through a sample 1cm thick of at least 70% and preferably of at least 80%" (column 4, lines 22-29), implying that it will dissolve the lipophilic compound, which by no means cannot be dissolved otherwise.

Instant claim 64 in the composition the weight ratio of the ionic or nonionic hydrophilic polymer block to the hydrophobic polymer block is between 1/100 and 50/1.

L'Alloret (US Patent No. 6,994,846) discloses that the hydrophilic block has a molar mass ranging from 600 g/mole to 300,000 g/mole and for the hydrophobic block from 400 g/mole to 200,000 g/mole (column 10, lines 50-57). Based on calculations performed by examiner multiple combinations can result to weight ratios between 0.01 to 50 for instance, if one divide 300,000/200,000 it will result to 1.5 which is in between 0.01 to 50, which reads on instant claim 64.

Instant claim 65 recites in the composition the weight concentration ratio between the lipophilic compound and the block copolymer is between 0.005 and 0.5.

L'Alloret (US Patent No. 6,994,846) discloses a working example comprising ascorbic acid 10% and triblock copolymer 0.6% in the composition (column 25, example 26), the ratio will result to 0.06 which is in between 0.005 and 0.5, which reads on instant claim 65

Instant claim 66 recites in the composition the hydrophobic polymer block comprises one or more polymerized monomer units from the list recited in the claim.

L'Alloret (US Patent No. 6,994,846) teaches that hydrophobic vinyl monomers include can be made from methyl methacrylate, ethyl methacrylate etc (column 8, lines 62-67 and column 9, lines 1-3), which reads on instant claim 66.

Instant claims 67-68 recite in the composition the hydrophobic block copolymer is nonionic and selected from the list recited in instant claim 68.

L'Alloret (US Patent No. 6,994,846) teaches that the hydrophobic block of the polymers of the invention may be obtained from neutral water soluble monomers (column 9, line 27-32), which will result in the formation of nonionic hydrophobic block and gives possible monomers

such as (meth)acrylamide, N-vinylacetamide, N-methyl-N-vinylacetamide etc (column 9, lines 46-65), which reads on instant claims 67-68.

Instant claim 69 recites in the composition the amphiphilic copolymer comprises at least one nonionic hydrophilic polymer block one selected from the group consisting of polyethylene oxide and polyvinylpyrrolidone.

L'Alloret (US Patent No. 6,994,846) also teaches that nonionic hydrophobic block may be polyoxylalkynelated for example polyethylene oxide (column 11, lines 59-64), which reads on instant claim 69.

Instant claim 70 recites in the composition the hydrophobic polymer block is selected from the list recited in the instant claim.

L'Alloret (US Patent No. 6,994,846) teaches that the hydrophobic block of the polymer comprises polymerized monomer units of styrene (column 6, lines 20-67), which will inherently give polystyrene, which reads on instant claim 70.

Instant claim 71 recites in the composition the block amphiphilic copolymer is selected from the list recited in the instant claim.

L'Alloret (US Patent No. 6,994,846) also teaches as discussed above the use of polystyrene as the hydrophobic block of the amphiphilic block polymer and the use of polyethylene oxide (polyoxyethylene), which reads on instant claim 71.

Instant claim 72 recites the incorporation of lipophilic compound from the list recited in the instant claim.



L'Alloret (US Patent No. 6,994,846) also teaches the composition also comprises active agents such as anti-inflammatory agents, vitamins etc (column 17, line 28-50), which reads on instant claim 72.

Instant claim 73 recites the incorporation of lipophilic compound from the list recited in the instant claim.

L'Alloret (US Patent No. 6,994,846) also teaches the composition also comprises active agents such vitamins vitamin A(retinol), vitamin C etc (column 17, line 34-38), which reads on instant claim 73.

Instant claim 75 recites the incorporation of sunscreen from the list recited in the instant claim.

L'Alloret (US Patent No. 6,994,846) also teaches the composition also comprises sunscreen agents such as benzophenone derivatives (column 19, lines 14-30), triazine derivatives (column 19, lines 51-57) etc, which reads on instant claim 75.

Instant claim 76 recites the incorporation of 1,3,5-triazine derivative from the list recited in the instant claim.

L'Alloret (US Patent No. 6,994,846) also teaches the composition also comprises 1,3,5-triazine derivatives such as diethylhexylbutamidotriazone (column 20, line 21), which is 2-[(p-(tert-butylamido)anilino)-4,6-bis[(p-(2'-ethylhexyl-1'-oxycarbonyl)- anilino)]-1,3,5-triazine, which reads on instant claim 76.

Instant claim 77 recites the composition further comprises butylmethoxydibenzoylmethane.

L'Alloret (US Patent No. 6,994,846) also teaches the composition comprises organic UV screening agents that more particularly preferred and the list contains butylmethoxydibenzoylmethane (column 20, lines 6-9), which reads on instant claim 77.

Instant claim 78-79 recite the incorporation of lipophilic compound from the list recited in the instant claims.

L'Alloret (US Patent No. 6,994,846) also teaches the composition also comprises active agents such as DHEA and its derivatives and metabolites (column 17, line 44-45), which reads on instant claims 78-79.

Instant claim 80 recites the incorporation of formulation adjuvants in the composition from the list recited in the instant claim.

L'Alloret (US Patent No. 6,994,846) also teaches the composition also comprises a fatty phase or oily phase (column 14, line 28-29), fillers (column 20, line 50), organic solvents (column 14, line 4-5) etc, which reads on instant claim 80.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any

evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness

Claims 61 and 63 are rejected under 35 U.S.C. 103(a) as being unpatentable over L'Alloret (US Patent No. 6,994,846, filed on July 18, 2002).

Instant claim 61 recites a cosmetic composition comprising at least one aqueous phase, at least one lipophilic compound and at least one block amphiphilic copolymer comprising at least one of an ionic or a nonionic hydrophilic polymer block and at least one hydrophobic polymer block. In further limitation instant claim 63 requires in the composition the molecular weight of the block copolymer is between 1,000 and 100,000.

As discussed above L'Alloret (US Patent No. 6,994,846) addresses all the limitations of instant claim 61. Additionally, L'Alloret (US Patent No. 6,994,846) teaches that the weight of the block copolymer in the composition ranges from 1000 g/mole to 500,000 g/mole (column 29, claim 7). This differs from the claimed limitation in instant claim 63 in that the weight range

Art Unit: 4161

100-500,000 g/mole is a genus while the range recited in the instant claim 1000-100000 g/mole is a species.

However, It would have been *prima facie* obvious for the ordinary person skilled in the art at the time the invention was made to routinely optimize various weight ranges for the block copolymer as also taught by L'Alloret (US Patent No. 6,994,846), because a *prima facie* case of obviousness exists where the claimed ranges lie within the range taught by L'Alloret (US Patent No. 6,994,846) (see MPEP 2144.05). Additionally, as long as the working concentration ranges are experimentally determine in routine manner a block copolymer having a weight of 1000 g/mole can accomplish the intended function in the same manner as a block copolymer having a weight of 500,000g/mole. Furthermore, differences in weight ranges of the block copolymer will not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating such weight range of the block copolymer is critical, and also since the general conditions of the instant claim 63 are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation.

Claims 61, 65, and 84 are rejected under 35 U.S.C. 103(a) as being unpatentable over L'Alloret (US Patent No. 6,994,846, filed on July 18, 2002).

Instant claim 61 recites a cosmetic composition comprising at least one aqueous phase, at least one lipophilic compound and at least one block amphiphilic copolymer comprising at least one of an ionic or a nonionic hydrophilic polymer block and at least one hydrophobic polymer block. In further limitations instant claim 65 requires in the composition the weight concentration ratio between the lipophilic compound and the block copolymer is between 0.005 and 0.5. In

additional further limitation instant claim 84 requires in the composition the weight concentration ratio between the lipophilic compound and the block copolymer is between 0.005 and 0.02.

As discussed above L'Alloret (US Patent No. 6,994,846) addresses all the limitations of instant claim 61 and 65. Additionally, L'Alloret (US Patent No. 6,994,846) discloses a working example comprising ascorbic acid 10% and triblock copolymer 0.6% in the composition (column 25, example 26), the ratio will result to 0.06 which is in between 0.005 and 0.5. This differs from the claimed limitation in instant claim 84 in that the weight concentration ratio 0.06 is not between 0.005 and 0.02.

It would have been *prima facie* obvious for the ordinary person skilled in the art at the time the invention was made to routinely optimize various weight values for the block copolymer and the lipophilic compound as disclosed in L'Alloret (US Patent No. 6,994,846), since it is a normal routinely performed by the skilled artisan. Furthermore, a *prima facie* case of obviousness exists where the claimed ranges and prior art ranges do not overlap but are close enough that one skilled in the art would have expected to have the same properties (see MPEP 2144.05 *Titanium Metals Corp. of America v. Banner*, 778 F.2d 775, 227 USPQ 773 (Fed. Cir. 1985)), hence it is examiner's position that 0.06 is close enough to 0.02 that the property of the mixture will be the same at this ratio to perform the intended function. Moreover, based on (see MPEP 2144.05 *In re Aller*, 220 F. 2d 454, 456, 105 USPQ 233, 235 (CCPA 1955)) "differences in concentration (weight values and ratios in the case of the instant application) will not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating such concentration is critical, and also since the general conditions of the instant claim

84 are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation.”

Claims 61, 73, and 74 are rejected under 35 U.S.C. 103(a) as being unpatentable over L’Alloret (US Patent No. 6,994,846, filed on July 18, 2002) in view of Guiramand et al. (US Patent Application Publication US 2003/0027864, published on February 6, 2003.)

Instant claim 61 recites a cosmetic composition comprising at least one aqueous phase, at least one lipophilic compound and at least one block amphiphilic copolymer comprising at least one of an ionic or a nonionic hydrophilic polymer block and at least one hydrophobic polymer block. In further limitation instant claim 73 recites the incorporation of lipophilic compound from the list recited in the instant claim. In additional further limitation instant claim 74 requires the composition further comprises at least one salicylic acid derivative from the list given in the claim.

As discussed above L’Alloret (US Patent No. 6,994,846) addresses all the limitations of instant claims 61 and 73. This differs from the claimed limitation in instant claim 74 in that L’Alloret (US Patent No. 6,994,846) doesn’t teach the types of salicylic acid derivatives recited in the instant claim.

However, Guiramand et al.( US 2003/0027864) discloses a cosmetic composition comprising salicylic acid derivatives 5-n-decanoylsalicylic, 5-n-dodecanoylsalicylic, 5-n-octylsalicylic etc (look claim 14)

It would have been *prima facie* obvious for the ordinary person skilled in the art at the time the invention was made to modify the composition of L’Alloret (US Patent No. 6,994,846)

by incorporating salicylic acid derivatives selected from the list recited in the instant claim as taught by Guiramand et al.( US 2003/0027864), because the salicylic acid derivatives are one of the many insoluble organic compounds known to be stabilized while making the cosmetic compositions. Furthermore, one of ordinary skill in the art would also recognize that substituting one insoluble organic compound by another into the composition of L'Alloret (US Patent No. 6,994,846) is obvious because the salicylic acid derivatives obviously contain this insoluble physical property.

Claims 61, 72, and 85 are rejected under 35 U.S.C. 103(a) as being unpatentable over L'Alloret (US Patent No. 6,994,846, filed on July 18, 2002) in view of Grollier et al. (US Patent No. 5,246,693, Issued on Sept 21, 1993)

Instant claim 61 recites a cosmetic composition comprising at least one aqueous phase, at least one lipophilic compound and at least one block amphiphilic copolymer comprising at least one of an ionic or a nonionic hydrophilic polymer block and at least one hydrophobic polymer block. In a further limitation instant claim 72 requires the incorporation of lipophilic compound from the list given in the claim. In additional further limitation instant claim 85 requires the lipophilic compound is selected from essential oils selected from the list recited in instant claim 85.

As discussed above L'Alloret (US Patent No. 6,994,846) addresses all the limitations of instant claims 61 and 72. This differs from the claimed limitation in instant claim 85 in the types of oils disclosed by L'Alloret (US Patent No. 6,994,846) (column 14, lines 42-47) are not the same as the essential oils recited in the instant claim.

Art Unit: 4161

However, Grollier et al. (US Patent No. 5,246,693) discloses a cosmetic composition comprising essential oils selected from eucalyptus, lavandin, lavender, vetiver, litsea cubeba, lemon, sandalwood, red or white thyme, rosemary, camomile, savory, nutmeg, cinnamon, hyssop, caraway and orange, clove, mint, rose and parsley seeds (column 3, 21-26).

It would have been *prima facie* obvious for the ordinary person skilled in the art at the time the invention was made to modify the composition of L'Alloret (US Patent No. 6,994,846) by incorporating essential oils selected from the list recited in the instant claims, because the essential oil is added for the formation of the oily phase in a sense water-in-oil or oil-in-water emulsions. Furthermore, one of ordinary skill in the art would also recognize that putting these essential oils into the composition of L'Alloret (US Patent No. 6,994,846) is obvious because the selection of a known material based on its suitability for its intended use supports a determination of *prima facie* obviousness (MPEP § 2144.07).

### **Conclusion**

No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TIGABU KASSA whose telephone number is (571)270-5867. The examiner can normally be reached on 9 am-5 pm Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Nolan can be reached on 571-272-0847. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Tigabu kassa

7/22/08

/Patrick J. Nolan/

Supervisory Patent Examiner, Art Unit 4161